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U.S. DISTRICT COURT  
EASTERN DISTRICT OF LA

2005 JUN -3 PM 12:17

LORETTA G. WHYTE  
CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

MDL No. 1643

IN RE: EDUCATIONAL TESTING  
SERVICE PRAXIS  
PRINCIPLES OF LEARNING  
AND TEACHING: GRADES  
7-12 LITIGATION

SECTION: R(5)

JUDGE VANCE  
MAG. JUDGE CHASEZ

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER #4:

Motions to Dismiss, Discovery Issues, Website

The Court held a pretrial conference on June 2, 2005, and the Court enters the following order on matters raised at the conference:

1. **Motions to Dismiss.**

The Court heard oral argument on ETS's motion to dismiss certain claims. Before the Court renders a decision on the motion, the parties must brief the choice of law as to each state

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law claim at issue. ETS's brief is due on June 24, 2005. The plaintiffs' memorandum in response is due July 18, 2005. ETS's reply is due July 26, 2005.

The Court will also hear a motion to dismiss on the segregated claims in *Kochensky v. ETS*, Civ. A. No. 04-03443. The parties are to confer and present to the Court an agreed briefing schedule on Kochensky's motion to amend her complaint and ETS's motion to dismiss her complaint.

## **2. Class Certification Discovery Issues**

The parties were unable to agree to the number of depositions each will take in the course of class certification discovery and whether ETS may depose unnamed class members. The Court rules that the plaintiffs may take 16 depositions. ETS may take 25 depositions, five of which may be of unnamed class members. The Court finds that ETS made an adequate showing of need to warrant the depositions of five unnamed class members.

## **3. The Website**


The Plaintiffs' Lead Counsel expressed concern that the website is not user-friendly to unnamed class members. Accordingly, the Court orders the parties to submit suggestions as to how to make the website more user-friendly by June 16,

2005. The Court will not order ETS to provide plaintiffs with the names of unnamed class members, as suggested by plaintiffs' counsel.

**4. Next Conference**

The next pretrial conference will take place on Wednesday, September 14, 2005 at 10:30 a.m. CST.

New Orleans, Louisiana, this 3<sup>rd</sup> day of June, 2005.

A handwritten signature in cursive script, reading "Sarah Vance", is written over a horizontal line.

SARAH S. VANCE  
UNITED STATES DISTRICT JUDGE